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Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KK KURUVILLA vs KANDLA PORT TRUST

Appearance:

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MR IS SUPEHIA for Petitioner

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Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

It is not in dispute that the petitioner is a 'workman' and the respondent is an 'Industry' within the meaning as defined under the provisions of Industrial Disputes Act 1947.

2. The petitioner by this petition has challenged the order dated 28.8.94 by which he was ordered to be removed from services. The order of removal has been passed by way of penalty after holding a full fledged departmental inquiry. The petitioner also filed an appeal against this order and the Appellate Authority confirmed this order.

3. The learned counsel for the petitioner contended that the inquiry has been conducted in the present case by the management in violation of the principles of natural justice.

4 The petitioner in this case has an alternative efficacious remedy available under the provisions of Industrial Disputes Act, 1947. Whether the order of dismissal was proper or not is an industrial dispute for which the petitioner could have raised an industrial dispute. When the statutory remedy and that too, in my opinion, more efficacious is available, the writ petition under article 226 of the Constitution of India should not be normally entertained by this Court. In such cases, the petitioner should be asked to first avail of the statutory alternative efficacious remedy. Whatever grounds which have been raised by the petitioner in this petition can be raised before the redressal of grievances forum provided under the Industrial Disputes Act 1947. The Labour Court or Industrial Tribunal to which a reference can be made by the State Government have wide powers than this court in the matter of appropriate punishment to be awarded for proved misconduct. The Labour Court can interfere in the matter of punishment as well as to go into on all the questions relating to the fairness of inquiry etc. In case the inquiry is held to be vitiated, then the management has its right to establish the charges. The fact that the management has a right to establish the charges against the petitioner, before the Labour Court or Industrial Tribunal in the eventuality of the inquiry is held to be unfair, the entertainment of writ petition directly in such matters will prejudice that right of the management. Taking into consideration all these aspects of this case, the writ petition is not maintainable only on the ground of availability of alternative remedy. The learned counsel for the petitioner has submitted that though alternative remedy is available in the present case, a writ petition was required to be

filed as the Labour Court/Industrial Tribunal takes long time in adjudicating the disputes. I do not find any justification in this contention. It is a matter of knowledge of everybody, that this Court is having the pendency of writ petitions of the year 1982 and onwards. When this court is itself unable to dispose of the cases of dismissals, termination of other punishments etc. of the year 1982 i.e. after 13 to 14 years, then how without availing of the alternative efficacious remedy, filing a writ petition by the petitioner in this Court directly can be justified in the petition. In this case if the writ petition is admitted, then looking to the mounting arrears of the cases in this court, in normal course, it will not come up for hearing for atleast 13-14 years; whereas possibly the Labour Court/Industrial Court may decide the case of the petitioner in much lesser time. In the result, this writ petition fails and the same is dismissed on the ground of availability of alternative efficacious remedy.

cgg

correction pl.see original.